



Federal Communications Commission  
Washington, D.C. 20554

February 23, 2009

**DA 09-424**

*In Reply Refer to:*

1800B3-MFW

Released: February 23, 2009

Lewis J. Paper, Esq.  
Dickstein Shapiro LLP  
1825 I Street, N.W.  
Washington, DC 20006

In re: DWOLY(AM), Battle Creek, MI  
Facility ID No. 11032  
File No. BR-20090115AEU

Application for Renewal of License

Petition for Reconsideration

BLSTA-20090115AEL  
Request for Special Temporary Authorization

Dear Mr. Paper:

This letter concerns: (1) the January 15, 2009, application (the "Application") filed by Christian Family Network, Inc. (the "Licensee") to renew the license of expired FM Station DWOLY(AM), Battle Creek, Michigan (the "Station"); and (2) the concurrently filed request for Special Temporary Authorization ("STA Request") to continue station operations pending consideration of the renewal application.<sup>1</sup> For the reasons set forth below, we will treat the Application as a Petition for Reconsideration under Section 1.106 of the Commission's Rules (the "Rules"),<sup>2</sup> dismiss that filing as untimely, and dismiss the STA Request.

*Background.* Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."<sup>3</sup> An application for renewal of the Station's license should have been filed by June 1, 2004, four months prior to the Station's October 1, 2004, license expiration date, but was not. Accordingly, on June 13, 2006, the Staff wrote to the Licensee, indicating that the Station's license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's data base. The Licensee was also advised

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<sup>1</sup> BLSTA-20090115AEL. On January 29, 2009, Spring Arbor University filed an "Opposition" to the STA Request. In light of the action taken herein, we will dismiss the Opposition.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> 47 C.F.R. § 73.3539(a).

that any further operation of the Station was unauthorized and must cease immediately.<sup>4</sup> *Public Notice* of these actions was released on June 16, 2006.<sup>5</sup> More than two and one-half years later, on January 15, 2009, the Licensee filed the Application and the STA Request which sought authorization to continue broadcasting pending action on the Application.<sup>6</sup> The Licensee provides an Exhibit detailing its attempts to file a license renewal application and its attempts to contact Commission staff when it was unable to do so.<sup>7</sup>

*Discussion.* The Licensee did not submit a response to the License Expiration Letter titled “Petition for Reconsideration.” Nevertheless, the Application, in fact, seeks reconsideration of the License Expiration Letter and, therefore, we will treat it as such a Petition.

Section 405 of the Communications Act of 1934, as amended (the “Act”),<sup>8</sup> and Section 1.106(f) of the Rules,<sup>9</sup> require petitioners to seek reconsideration no later than 30 days after *Public Notice* of the action for which reconsideration is sought. The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration set forth in Section 405 of the Act. Although the Commission may not refuse to consider a late-filed petition for reconsideration if the petitioner shows that its failure to file for reconsideration in a timely manner resulted from “extraordinary circumstances,”<sup>10</sup> no such showing has been made here. Accordingly, we will dismiss the Application as untimely.

With respect to the STA Request, under Section 309(f) of the Communications Act,<sup>11</sup> when an appropriate application has been filed, the Commission may grant special temporary authorization if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest.

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<sup>4</sup> *Letter to Christian Family Network, Inc.* (Aud. Div. rel. Jun. 13, 2006) (“License Expiration Letter”). Despite these explicit directions, the Licensee did not cease station operations, and was issued a \$10,000 Notice of Apparent Liability by the Commission’s Enforcement Bureau for unauthorized operations on August 16, 2007. *Christian Family Network, Inc.*, Notice of Apparent Liability, NAL/Acct. No. 200732360001 (EB, Detroit Office rel. Aug. 16, 2007). The \$10,000 amount was affirmed in July 2008, *Christian Family Network, Inc.*, Forfeiture Order, 23 FCC Rcd 10898 (EB 2008), but subsequently reduced to \$5,000 based on the Licensee’s inability to pay. *Christian Family Network, Inc.*, Memorandum Opinion and Order, DA 08-2815, 2008 WL 5423111 (EB Dec. 31, 2008).

<sup>5</sup> *See Broadcast Actions*, Public Notice, Report No. 46258 (Jun. 16, 2006), p.16.

<sup>6</sup> File No. BLSTA-20090115AEL.

<sup>7</sup> STA Request, Exhibits 1, 2. The Exhibits consist of two letters from Licensee President James Leonard Elsmann, Esq., to the Commission dated September 22, 2004, and December 10, 2006. The letters bear no date stamp from the Office of the Secretary.

<sup>8</sup> 47 U.S.C. § 405. *See Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). *See also Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991); *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978).

<sup>9</sup> 47 C.F.R. § 1.106(f).

<sup>10</sup> *Gardner v. FCC*, 530 F.2d 1085, 1091-92 (D.C. Cir. 1976); *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990). That an application is filed one day late does not constitute an “extraordinary circumstance” that would warrant its consideration. *Pueblo Radio Broadcasting Service*, *supra*.

<sup>11</sup> 47 U.S.C. § 309(f).

Because the expiration of the Station's license is now final, there is no basis upon which to grant the Licensee's request to continue operation of Station DWOLY(AM).

*Conclusion/Actions.* For the reasons set forth above, the application (File No. BR-20090115AEU) of Christian Family Network, Inc. for renewal of expired FM Station DWOLY(AM), Battle Creek, Michigan, treated as a Petition for Reconsideration, IS DISMISSED as untimely. Additionally, the January 15, 2009, Request for Temporary Authorization IS DISMISSED, and Spring Arbor University's January 29, 2009, Opposition IS DISMISSED as moot.

Any operation of the DWOLY(AM) facilities is unauthorized and must cease immediately. Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the station's tower be maintained until the tower is dismantled. Accordingly, the owner of the towers supporting the referenced stations' transmitting antennas must maintain the tower in the manner prescribed by the Commission's rules and the terms of the expired license.<sup>12</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Christian Family Network, Inc.  
Spring Arbor University

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<sup>12</sup> See 47 U.S.C. § 303(q) and 47 C.F.R. § 17.6.